

ARTICLE IX. PEDDLERS, HAWKERS, CANVASSERS; SOLICITORS*

*State law reference(s)--Authority to regulate, Vernon's
Ann. Civ. St. art. 1175(24).

Sec. 16-226. Definitions.

As used in this article the following words and phrases shall have the definitions ascribed to them by this section:

Canvasser. The term "canvasser" includes "solicitor" and any person who makes retail sales for future delivery of tangible property from house to house or in any public place, whether or not payment is collected at the time of such sale, and such sales are taxable transactions under the provisions of the limited sales, excise and use tax of the state.

Peddler shall include the term "hawker" and shall mean any person who makes retail sales of tangible property from house to house or in any public place, and such sales are not made from an established place and delivery is made at the time of sale, whether or not payment is collected at the time of such sale.

Public place shall mean, for purposes of Article IX, a place to which the general public has a right to resort and is not prohibited by section 19-8 of the City Code, but does not include streets, traffic medians, shoulders and improved shoulders.

Real property shall mean any lot, tract, parcel, or section of land and shall include whatever is erected, growing upon, or affixed to the land; but shall not mean nor include the interior of a permanent commercial structure if such structure is used simultaneously for a business purpose for which a certificate of occupancy has been issued and is in effect.

Retail sale shall mean any sale other than a sale of tangible property to any purchaser who is purchasing the tangible property for the purpose of reselling it in the normal course of business either in the form or condition

in which it is purchased or as an attachment to or as an integral part of other tangible property.

Tangible property shall mean property which may be seen, weighed, measured, felt or touched or which is in any other manner perceptible to the senses.

(Code 1959, § 28-1; Ord. No. 51213, 2, 9-6-79; Ord. No. 66193, § 1, 12-3-87; Ord. No. 71697, §§ 1, 2, 6-7-90; Ord. No. 88723, § 1, 10-22-98)

Sec. 16-227. License required.

It shall be unlawful for any person to engage in the business of peddler or canvasser of any tangible property without having first secured a license therefor in compliance with the provisions of this article.

(Code 1959, § 28-2; Ord. No. 51213, § 1, 9-6-79)

Sec. 16-228. Qualifications for license.

No peddler's or canvasser's license shall be issued to any person who has been convicted of the commission of a felony in a court of competent jurisdiction within one (1) year of the date of the application, to any person who has been on probation or parole as a result of a felony within six (6) months of the date of the application or to any person who has knowingly made any false, misleading or fraudulent statement of fact in the license application. A license shall not be issued to any person who has been convicted of a violation of any of the provisions of this article or to any person whose license has previously been revoked, if such conviction or revocation occurred within one (1) year of the date of the application.

(Code 1959, § 28-3; Ord. No. 51213, § 5, 9-6-79)

Sec. 16-229. Application for license.

Applicants for license under this article shall file a written sworn application with the city treasurer at least five (5) days prior to the date of the initial contemplated sale. The application shall state thereon the description and license plate number of any vehicles intended to be operated in connection with his business and the kind of

merchandise to be peddled or canvassed. The applicant shall also provide the following:

- (1) The name or names of the person or persons having the management or supervision of the applicant's business, if any, and the permanent address of such person or persons;
- (2) The name and address of the person on whose account the business will be carried on, if any, and if a corporation under the laws of what state it is incorporated;
- (3) The place or places where the applicant within the three (3) months preceding the date of the application peddled or canvassed, stating the nature thereof and giving the applicant's full address in each place, and his local address and telephone number;
- (4) Whether or not the applicant has been convicted of the commission of a felony in a court of competent jurisdiction within one (1) year of the date of the application and if the applicant has been on probation or parole as a result of a felony within six (6) months of the date of the application; and
- (5) Whether or not the applicant has previously held a license issued under the provisions of this article and if such license was revoked.

(Code 1959, § 28-5; Ord. No. 51213, § 3, 9-6-79)

Sec. 16-230. Investigation of applicant by chief of police.

Upon the receipt of a license application the original shall be referred to the chief of police, who shall cause an investigation to be made for the purpose of ascertaining the veracity of the statements made in the application. If, as a result of the investigation, the chief of police finds that the applicant does not meet the requirements set forth in section 16-228 of this article then he shall endorse his disapproval and his reasons for the same upon the application.

(Code 1959, § 28-4; Ord. No. 51213, § 7, 9-6-79)

Sec. 16-231. Denial of license; appeal; hearing.

Any person denied a license shall have the right to appeal such action to the city council. In such case the procedure shall be the same as in revocation. After holding a hearing the council shall, by majority vote, either sustain the action of the city treasurer or issue an order to the city treasurer to issue the license.

(Code 1959, § 28-5.1; Ord. No. 51213, § 6, 9-6-79)

Sec. 16-232. License fees.

(a) The license fee for a foot peddler's license shall be twenty dollars (\$20.00) for a period expiring one hundred twenty (120) days from the date of issue or sixty dollars (\$60.00) for a license expiring one (1) year from the date of issue. The fee for a license for a peddler utilizing a truck, cart, or other vehicle in his/her business shall be thirty dollars (\$30.00) for a period expiring one hundred twenty (120) days from the date of issue or ninety dollars (\$90.00) for a license expiring one year from the date of issue. The fee for a canvasser's license shall be ten dollars (\$10.00) for a period expiring one hundred twenty (120) days from the date of issue or thirty dollars (\$30.00) for a license expiring one (1) year from the date of issue.

(b) All license fees collected hereunder shall be compensation to the city for the services herein required of it and to partially defray the expenses of enforcement of this article.

(Code 1959, § 28-5.2; Ord. No. 51213, § 4, 9-6-79; Ord. No. 63230, § 1, 7-16-86; Ord. No. 90492, § 2, 9-16-99)

Sec. 16-233. Transfer of license prohibited.

No license issued under the provisions of this article is transferrable and the authority a license confers shall be conferred only on the licensee named therein.

(Code 1959, § 28-5.3; Ord. No. 51213, § 8, 9-6-79)

Sec. 16-234. Revocation of license.

- (a) *Grounds.* Any license issued hereunder shall be revoked by the city treasurer if the license holder is convicted of a violation of any of the provisions of this article or has knowingly made a false material statement in the application or otherwise becomes disqualified for the issuance of a license under the terms of this article.
- (b) *Notice.* Notice of the revocation shall be given to the licensee in writing, with the reasons for the revocation specified in the notice, served either by personal service of such notice upon the licensee or by certified United States mail to his last known address. The revocation shall become effective the day following personal service or if mailed, three (3) days from the date of mailing.
- (c) *Appeal; hearing.* The licensee shall have ten (10) days from the date of such revocation in which to file notice with the city clerk of his appeal to the city council from the order of the city treasurer. The city clerk shall provide for a city council hearing on the appeal at the earliest convenient regular city council meeting and shall notify the appellant and the city treasurer of the date of the city council hearing. After holding a hearing on such revocation, the city council shall by majority vote either sustain the action of the city treasurer or issue an order to the city treasurer to reinstate the license.
- (d) In the event of the filing of an appeal from a revocation issued under the provisions of this article, then, until such appeal has been determined by the city council such revocation order shall be stayed.

(Code 1959, § 28-5.4; Ord. No. 51213, § 6, 9-6-79)

Sec. 16-235. Use of traffic islands, medians, etc., for storage or sale of tangible property prohibited.

No person shall store or keep or offer for sale any tangible property on any traffic island, median or other traffic control device located within the corporate limits of the city.

(Code 1959, § 28-5.5; Ord. No. 51213, § 9, 9-6-79)

Sec. 16-236. Areas prohibited to peddlers and canvassers; affirmative defense.

- (a) *Public property generally.* It shall be unlawful for any person to peddle, canvass or solicit or cause or permit to be peddled, canvassed or solicited any tangible property or services on city owned property with the exception of:
 - (1) Parks, as provided under the applicable provisions of Chapter 22;
 - (2) Sidewalks and where such activities are not prohibited by subsection (b) of this section or section 19-8 of the City Code and;
 - (3) Persons and their agents who have contracted for services within the city for sales on the grounds of city-owned property.
- (b) *Downtown business district:*
 - (1) It shall be unlawful for any person to peddle, canvass, or solicit or cause or permit to be peddled, canvassed or solicited any tangible property or services in the downtown business district with the exception of souvenir and novelty items at certain approved locations by persons who in addition to a peddler's license have obtained a special license from the department of public utilities which will set additional location, operational and aesthetic requirements unique to the downtown area.
 - (2) Novelties and souvenir vendors shall be limited to the sale of novelty and souvenir items within the commonly accepted definition of words "novelty" and "souvenir." A general list of acceptable and/or unacceptable items within the framework of the definitions will be prepared and made available to the applicants. Any item disapproved by the city manager or his designee shall not be offered for sale.

- (3) The downtown business district shall be the area beginning at the interchange between Durango Boulevard and I.H. 35 Expressway; thence northward and eastward along I.H. 35 Expressway to I.H. 37 Expressway; thence southward on I.H. 37 Expressway to Durango Boulevard; thence westward along Durango Boulevard to I.H. 35 Expressway the point of beginning.
 - (4) The annual license fee shall be three hundred dollars (\$300.00).
 - (5) Any person who is denied this license or whose license is revoked or suspended shall have the right to appeal such action to the city council. The person shall have ten (10) days from the date of such denial, revocation or suspension in which to file notice with the city clerk of his appeal to city council from the order of the city manager or his designee. The city clerk shall provide for a council hearing on such appeal at the earliest convenient regular council meeting and shall notify the appellant and the city manager or his designee of such council hearing. After holding the hearing the council shall by majority vote either sustain the action of the city manager or his designee or issue an order to the city manager or his designee to either grant or reinstate the license.
- (c) It shall be unlawful for any person other than the actual real property owner to use a license issued under this article to peddle, canvass or solicit or cause to be peddled, canvassed or solicited any tangible property or services on privately owned real property without having on the real property a sworn and notarized written statement authorizing such use from the owner of such real property to include:
- (1) The full street address of the real property;
 - (2) The exact nature of the use authorized;
 - (3) The specific dates and times such use is authorized;
 - (4) The printed name and address of the owner;

- (5) The printed name, address, and position of the owner's authorized representative signing if the owner is not able to sign personally;
- (6) A contact number at which the owner or the owner's representative can be reached at all times the real property is authorized for use; and
- (7) The printed name and address of all persons authorized to use the real property.

The requirements in this subsection are in addition to any other requirements of this Code and shall not be used to nullify, substitute, or override any other subsections or provisions.

- (d) It shall be an affirmative defense to any prosecution under this section that the peddler, canvasser or solicitor operated only off the surfaced portion of a public street, within one thousand (1,000) linear feet of the cemetery, excluding S.W. Military Drive and Mission Road, and not closer than thirty (30) feet to any street intersection provided that it is:
 - (1) Easter, Mother's Day, or Father's Day or within three (3) days prior to or three (3) days after such holiday, or
 - (2) Between October 27 and November 6 (inclusive) to cover All Soul's Day/All Saints Day,

and provided further that such peddler, canvasser or solicitor operating within one thousand (1,000) feet of San Fernando Cemetery shall not make sales within one hundred fifty (150) feet from the property line of an existing flower shop.

- (e) The sale of flowers shall not be subject to frequency of use restrictions on Castroville Road between General McMullen and Inca Streets on all three (3) days before and all three (3) days after and on Valentine's Day, Easter, Mother's Day, Father's Day, All Souls' Day and All Saints' Day if the vendor has the authorization from the real property owner for such use as required by this section.

- (f) No exception or defense listed in this section shall be a defense in any way to prosecution for a violation of section 19-8 of the City Code.

(Code 1959, § 28-5.6; Ord. No. 51213, § 10, 9-6-79; Ord. No. 51478, § 1, 11-14-79; Ord. No. 51683, § 1, 1-3-80; Ord. No. 56455, §§ 1--3, 1-27-83; Ord. No. 65691, § 17, 9-10-87; Ord. No. 66193, § 1, 12-3-87; Ord. No. 71697, §§ 3, 4, 6-7-90; Ord. No. 85310, § 3, 12-12-96; Ord. No. 88723, § 3, 10-22-98; Ord. No. 90497, § 1, 9-16-99)

Sec. 16-236.1. Guided tour sales prohibited from Alamo East.

Guided tour sales are hereby prohibited from Alamo East, within the Historic Alamo Fortress Compound.

(Ord. No. 69292, § 7, 4-13-89)

Sec. 16-237. Exceptions to article.

- (a) This article is not to be construed as prohibiting or limiting the distribution or sale of religious publications, newspapers, handbills or other written or printed matter sold or distributed for the purpose of disseminating information or news on sidewalks or in any public place.
- (b) This article is not to be construed as prohibiting "house-to-house" peddling or canvassing.
- (c) This article is not to be construed as requiring the licensing of canvassers engaged solely in interstate commerce.
- (d) Any person who peddles any food or beverage for human consumption shall not be subject to the licensing provisions of this article, but must be licensed for such peddling by the health department as provided in chapter 13 of this Code.

(Code 1959, § 28-5.7; Ord. No. 51213, § 12, 9-6-79; Ord. No. 51478, § 1, 11-14-79; Ord. No. 71697, § 5, 6-7-90)

Sec. 16-238. Police to aid in enforcement.

It shall be the duty of any police officer of the city to require any person seen canvassing or peddling and who is not known by such officer to be duly licensed, to produce his canvasser's or peddler's license and to enforce the provisions of this article against any person found to be violating the same.

(Code 1959, 28-5.8; Ord. No. 51213, § 7, 9-6-79)

Sec. 16-239. Hours during which activities prohibited.

- (a) It shall be unlawful for any person to intentionally peddle, canvass or solicit, or intentionally cause or knowingly permit to be peddled, canvassed, sold or solicited any tangible property under a license as required by this article on sidewalks and at public places between the hours of 11:00 p.m. and 8:00 a.m. or door-to-door at private residences between the hours of 8:00 p.m. and 8:00 a.m.
- (b) Except as otherwise allowed in this article it shall be unlawful for any person other than the actual real property owner to use a license issued under this article to peddle, canvass or solicit or cause to be peddled, canvassed or solicited any tangible property or services on any portion of a privately owned real property more than three (3) times within any thirty-day period regardless of the authorization of the real property owner. For the purposes of this subsection all usage within a twenty-four-hour day shall be counted as one (1) use. All lots, tracts, parcels, or sections of land sharing a street address or parking area shall be considered one (1) real property under this subsection.
- (c) The restrictions in subsection (b) above shall not apply if the usage is covered by an affirmative defense within this article.
- (d) The restrictions in subsection (b) above shall not apply if the peddler, canvasser, or solicitor using a license issued under this article secured the sworn and notarized written authorization from the private real property owner prior to the effective date of that subsection. Such authorization shall not be required to include specific dates and times for the authorized usage.

(e) The restrictions in subsection (b) above shall not apply if all the tangible property is carried at all times on or by a non-stationary person using a license issued under this article and actively engaged in the peddling, canvassing, or soliciting of such tangible property.

(Ord. No. 60654, § 1, 5-9-85; Ord. No. 71697, § 6, 6-7-90; Ord. No. 88723, §§ 2, 3, 10-22-98)

Secs. 16-240--16-250. Reserved.